

**Introduced by Committee on Banking and Financial Institutions
(Senators Block (Chair), Galgiani, Hall, Hueso, Lara, Morrell,
and Vidak)**

February 24, 2015

An act to amend Sections 5039.5, 5213, 7213, 9213, 12228.5, 12320, 12331, and 12353 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 351, as introduced, Committee on Banking and Financial Institutions. Corporations: management.

(1) The Nonprofit Corporation Law authorizes the formation of public benefit corporations, mutual benefit corporations, and religious corporations. The Consumer Cooperative Corporation Law authorizes the formation of consumer cooperatives. Each of these laws require a corporation formed under its provisions to have specific corporate officers, which include, among others, a chair of the board, which is also referred to with gender variations.

This bill would specifically expand the permissible titles relating to a chair of a board.

(2) The Consumer Cooperative Corporation Law authorizes the formation of consumer cooperatives corporations, and specifies the corporate power of a corporation and its officers formed under its provisions.

This bill would expand the authority of a consumer cooperative corporation to conduct its ordinary business operations in anticipation of, or under the conditions of, an emergency, as defined, to include, among others, the authority to modify the requirements of giving notice to directors of a meeting of the board of directors in any practicable manner. The bill would also authorize a consumer cooperative

corporation to enact bylaws effective only during an emergency relating to the management and conduct of its ordinary business affairs, to include, among others, bylaws providing procedures for designating additional or substitute directors.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5039.5 of the Corporations Code is
2 amended to read:

3 5039.5. ~~The term “chair” includes “chairperson,” “chairman,”~~
4 ~~and “chairwoman.”~~ All references in this division to ~~“chairman”~~
5 ~~shall be deemed to refer to “chair.”~~ “*chairman of the board,*” other
6 *than in Sections 5213, 7213, and 9213, shall be deemed to refer*
7 *to all permissible titles for a chair of the board, as permitted by*
8 *Sections 5213, 7213, and 9213.*

9 SEC. 2. Section 5213 of the Corporations Code is amended to
10 read:

11 5213. (a) A corporation shall have (1) a chair of the board,
12 who may be given the title *chair, chairperson, chairman,*
13 *chairwomen,* chair of the board, chairperson of the board, chairman
14 of the board, or chairwoman of the board, or a president or both,
15 (2) a secretary, (3) a treasurer or a chief financial officer or both,
16 and (4) any other officers with any titles and duties as shall be
17 stated in the bylaws or determined by the board and as may be
18 necessary to enable it to sign instruments. The president, or if there
19 is no president the chair of the board, is the general manager and
20 chief executive officer of the corporation, unless otherwise
21 provided in the articles or bylaws. Unless otherwise specified in
22 the articles or the bylaws, if there is no chief financial officer, the
23 treasurer is the chief financial officer of the corporation. Any
24 number of offices may be held by the same person unless the
25 articles or bylaws provide otherwise, except that no person serving
26 as the secretary, the treasurer, or the chief financial officer may
27 serve concurrently as the president or chair of the board. Any
28 compensation of the president or chief executive officer and the
29 chief financial officer or treasurer shall be determined in
30 accordance with subdivision (g) of Section 12586 of the
31 Government Code, if applicable.

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

(c) If the articles or bylaws provide for the election of any officers by the members, the term of office of the elected officer shall be one year unless the articles or bylaws provide for a different term which shall not exceed three years.

SEC. 3. Section 7213 of the Corporations Code is amended to read:

7213. (a) A corporation shall have (1) a chair of the board, who may be given the title *chair*, *chairperson*, *chairman*, *chairwomen*, chair of the board, chairperson of the board, chairman of the board, or chairwoman of the board, or a president or both, (2) a secretary, (3) a treasurer or a chief financial officer or both, and (4) any other officers with any titles and duties as shall be stated in the bylaws or determined by the board and as may be necessary to enable it to sign instruments. The president, or if there is no president the chair of the board, is the general manager and chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. Unless otherwise specified in the articles or the bylaws, if there is no chief financial officer, the treasurer is the chief financial officer of the corporation. Any number of offices may be held by the same person unless the articles or bylaws provide otherwise. Where a corporation holds assets in charitable trust, any compensation of the president or chief executive officer and the chief financial officer or treasurer shall be determined in accordance with subdivision (g) of Section 12586 of the Government Code, if applicable.

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

SEC. 4. Section 9213 of the Corporations Code is amended to read:

9213. (a) A corporation shall have (1) a chair of the board, who may be given the title *chair*, *chairperson*, *chairman*, *chairwomen*, chair of the board, chairperson of the board, chairman of the board, or chairwoman of the board, or a president or both, (2) a secretary, (3) a treasurer or a chief financial officer or both and (4) any other officers with any titles and duties as are stated in the bylaws or determined by the board and as may be necessary to enable it to sign instruments. The president, or if there is no president, the chair of the board, is the general manager and chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. Unless otherwise specified in the articles or the bylaws, if there is no chief financial officer, the treasurer is the chief financial officer of the corporation. Any number of offices may be held by the same person unless the articles or bylaws provide otherwise, except that no person serving as the secretary, the treasurer, or the chief financial officer may serve concurrently as the president or chair of the board. Any compensation of the president or chief executive officer and the chief financial officer or treasurer shall be determined in accordance with subdivision (g) of Section 12586 of the Government Code, if applicable.

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

SEC. 5. Section 12228.5 of the Corporations Code is amended to read:

12228.5. ~~The term “chair” includes “chairperson,” “chairman,” and “chairwoman.”~~ For the purposes of this part, all references to ~~“chairman” shall be deemed to refer to “chair.”~~ *“chairman of the board,” other than in Section 12353, shall be deemed to refer to all permissible titles for a chair of the board, as permitted by Section 12353.*

SEC. 6. Section 12320 of the Corporations Code is amended to read:

1 12320. Subject to any limitations contained in the articles or
2 bylaws and to compliance with other provisions of this part and
3 any other applicable laws, a corporation, in carrying out its
4 activities, shall have all of the powers of a natural person,
5 including, without limitation, the power to:

6 (a) Adopt, use, and at will alter a corporate seal, but failure to
7 affix a seal does not affect the validity of any instrument.

8 (b) Adopt, amend, and repeal bylaws.

9 (c) Qualify to conduct its activities in any other state, territory,
10 dependency or foreign country.

11 (d) Issue, purchase, redeem, receive, take or otherwise acquire,
12 own, sell, lend, exchange, transfer or otherwise dispose of, pledge,
13 use and otherwise deal in and with its own memberships, bonds,
14 debentures, notes and debt securities.

15 (e) Pay pensions, and establish and carry out pension, deferred
16 compensation, saving, thrift and other retirement, incentive and
17 benefit plans, trusts and provisions for any or all of its directors,
18 officers, employees, and persons providing services to it or any of
19 its subsidiary or related or associated corporations, and to
20 indemnify and purchase and maintain insurance on behalf of any
21 fiduciary of such plans, trusts, or provisions.

22 (f) Issue certificates evidencing membership in accordance with
23 the provisions of Section 12401 and issue identity cards to identify
24 those persons eligible to use the corporation's facilities.

25 (g) Levy dues, assessments, and membership and transfer fees.

26 (h) Make donations for the public welfare or for community
27 funds, hospital, charitable, educational, scientific, civic, religious
28 or similar purposes.

29 (i) Assume obligations, enter into contracts, including contracts
30 of guarantee or suretyship, incur liabilities, borrow or lend money
31 or otherwise use its credit, and secure any of its obligations,
32 contracts or liabilities by mortgage, pledge or other encumbrance
33 of all or any part of its property and income.

34 (j) Participate with others in any partnership, joint venture or
35 other association, transaction or arrangement of any kind whether
36 or not such participation involves sharing or delegation of control
37 with or to others.

38 (k) Act as trustee under any trust incidental to the principal
39 objects of the corporation, and receive, hold, administer, exchange,
40 and expend funds and property subject to such trust.

1 (l) Carry on a business at a profit and apply any profit that results
2 from the business activity to any activity in which it may lawfully
3 engage.

4 (m) (1) *In anticipation of or during an emergency, take either*
5 *or both of the following actions necessary to conduct the*
6 *corporation's ordinary business operations and affairs, unless*
7 *bylaws, authorized pursuant to subdivision (h) of Section 12331,*
8 *provide otherwise:*

9 (A) *Modify lines of succession to accommodate the incapacity*
10 *of any director, officer, employee, or agent resulting from the*
11 *emergency.*

12 (B) *Relocate the principal office, designate alternative principal*
13 *offices or regional offices, or authorize the officers to do so.*

14 (2) *During an emergency, take either or both of the following*
15 *actions necessary to conduct the corporation's ordinary business*
16 *operations and affairs, unless bylaws, authorized pursuant to*
17 *subdivision (h) of Section 12331, provide otherwise:*

18 (A) *Give notice to a director or directors in any practicable*
19 *manner under the circumstances, including, but not limited to, by*
20 *publication and radio, when notice of a meeting of the board*
21 *cannot be given to that director or directors in the manner*
22 *prescribed by the bylaws or Section 12351.*

23 (B) *Deem that one or more officers of the corporation present*
24 *at a board meeting is a director, in order of rank and within the*
25 *same rank in order of seniority, as necessary to achieve a quorum*
26 *for that meeting.*

27 (3) *In anticipation of or during an emergency, the board may*
28 *not take any action that requires the vote of the members or is not*
29 *in the corporation's ordinary course of business, unless the*
30 *required vote of the members was obtained prior to the emergency.*

31 (4) *Any actions taken in good faith in anticipation of or during*
32 *an emergency under this subdivision bind the corporation and*
33 *may not be used to impose liability on a corporate director, officer,*
34 *employee, or agent.*

35 (5) *For purposes of this subdivision, "emergency" means any*
36 *of the following events or circumstances as a result of which, and*
37 *only so long as, a quorum of the corporation's board of directors*
38 *cannot be readily convened for action:*

39 (A) *A natural catastrophe, including, but not limited to, a*
40 *hurricane, tornado, storm, high water, wind-driven water, tidal*

1 *wave, tsunami, earthquake, volcanic eruption, landslide, mudslide,*
2 *snowstorm, or, regardless of cause, any fire, flood, or explosion.*

3 *(B) An attack on this state or nation by an enemy of the United*
4 *States of America, or upon receipt by this state of a warning from*
5 *the federal government indicating that an enemy attack is probable*
6 *or imminent.*

7 *(C) An act of terrorism or other manmade disaster that results*
8 *in extraordinary levels of casualties or damage or disruption*
9 *severely affecting the infrastructure, environment, economy,*
10 *government functions, or population, including, but not limited to,*
11 *mass evacuations.*

12 *(D) A state of emergency proclaimed by the governor or by the*
13 *President of the United States.*

14 SEC. 7. Section 12331 of the Corporations Code is amended
15 to read:

16 12331. (a) The bylaws shall set forth (unless such provision
17 is contained in the articles, in which case it may only be changed
18 by an amendment of the articles) the number of directors of the
19 corporation, or the method of determining the number of directors
20 of the corporation, or that the number of directors shall be not less
21 than a stated minimum or more than a stated maximum with the
22 exact number of directors to be fixed, within the limits specified,
23 by approval of the board or the members (Sections 12222 and
24 12224), in the manner provided in the bylaws, subject to
25 subdivision (e). The number or minimum number of directors shall
26 not be less than three. Alternate directors may be permitted, in
27 which event, the bylaws shall specify the manner and times of
28 their election and the conditions to their service in place of a
29 director.

30 (b) Once members have been admitted, a bylaw specifying or
31 changing a fixed number of directors or the maximum or minimum
32 number or changing from a fixed to a variable board or vice versa
33 may only be adopted by approval of the members.

34 (c) The bylaws may contain any provision, not in conflict with
35 law or the articles, for the management of the activities and for
36 the conduct of the affairs of the corporation, including but not
37 limited to:

38 (1) Any provision referred to in subdivision (c) of Section
39 12313.

1 (2) The time, place and manner of calling, conducting and giving
2 notice of members', directors', and committee meetings, or of
3 conducting mail ballots.

4 (3) The qualifications, duties and compensation of directors;
5 the time of their election; and the requirements of a quorum for
6 directors' and committee meetings.

7 (4) The appointment of committees, composed of directors or
8 nondirectors or both, by the board or any officer and the authority
9 of these committees.

10 (5) The appointment, duties, compensation and tenure of
11 officers.

12 (6) The mode of determination of members of record.

13 (7) The making of reports and financial statements to members.

14 (8) Setting, imposing and collecting dues, assessments, and
15 membership and transfer fees.

16 (9) The time and manner of patronage distributions consistent
17 with this part.

18 (d) The bylaws may provide for eligibility, the manner of
19 admission, withdrawal, suspension, and expulsion of members,
20 and the suspension or termination of memberships consistent with
21 the requirements of Section 12431.

22 (e) The bylaws may require, for any or all corporate actions,
23 the vote of a larger proportion of, or all of, the members or the
24 members of any class, unit, or grouping of members or the vote
25 of a larger proportion of, or all of, the directors, than is otherwise
26 required by this part. A provision in the bylaws requiring a greater
27 vote shall not be altered, amended or repealed except by the greater
28 vote, unless otherwise provided in the bylaws.

29 (f) The bylaws may contain a provision limiting the number of
30 members, in total or of any class or series, which the corporation
31 is authorized to admit.

32 (g) The bylaws may provide for the establishment by the
33 corporation of a program for the education of its members, officers,
34 employees and the general public in the principles and techniques
35 of cooperation.

36 (h) (1) *The bylaws may contain any provision, not in conflict*
37 *with the articles, to manage and conduct the ordinary business*
38 *affairs of the corporation effective only during an emergency,*
39 *including, but not limited to, procedures for calling a board*

1 *meeting, quorum requirements for a board meeting, and*
2 *designation of additional or substitute directors.*

3 *(2) During an emergency, the board may not take any action*
4 *that requires the vote of the members or otherwise is not in the*
5 *corporation's ordinary course of business, unless the required*
6 *vote of the members was obtained prior to the emergency.*

7 *(3) All provisions of the regular bylaws consistent with the*
8 *bylaws effective only in the event of an emergency shall remain*
9 *effective during the emergency, and the emergency bylaws shall*
10 *not be effective after the emergency ends.*

11 *(4) Corporate action taken in good faith in accordance with the*
12 *bylaws effective only in the event of an emergency binds the*
13 *corporation, and may not be used to impose liability on a corporate*
14 *director, officer, employee, or agent.*

15 *(5) For purposes of this subdivision, "emergency" has the same*
16 *meaning as the term does in Section 12320.*

17 SEC. 8. Section 12353 of the Corporations Code is amended
18 to read:

19 12353. (a) A corporation shall have (1) a chair of the board,
20 who may be given the title *chair, chairperson, chairman,*
21 *chairwomen,* chair of the board, chairperson of the board, chairman
22 of the board, or chairwoman of the board, or a president or both,
23 (2) a secretary, (3) a treasurer or a chief financial officer or both,
24 and (4) any other officers with any titles and duties as shall be
25 stated in the bylaws or determined by the board and as may be
26 necessary to enable it to sign instruments. The president, or if there
27 is no president the chair of the board, is the chief executive officer
28 of the corporation, unless otherwise provided in the articles or
29 bylaws. Unless otherwise specified in the articles or the bylaws,
30 if there is no chief financial officer, the treasurer is the chief
31 financial officer of the corporation. Any number of offices may
32 be held by the same person unless the articles or bylaws provide
33 otherwise. Either the chair of the board or the president shall be
34 elected from among those board members elected by the
35 membership of the corporation.

36 (b) Except as otherwise provided by the articles or bylaws,
37 officers shall be chosen by the board and serve at the pleasure of
38 the board, subject to the rights, if any, of an officer under any
39 contract of employment. Any officer may resign at any time upon
40 written notice to the corporation without prejudice to the rights, if

- 1 any, of the corporation under any contract to which the officer is
- 2 a party.

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